IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

WEDNESDAY, THE 25TH JULY 2007 / 3RD SRAVANA 1929

WP(C).No. 21329 of 2007(L)

PETITIONER:

M.A.KAMARUDHEEN, S/O. ABBAS, AGED 57,
ABBAS MANZIL, MANJAKKULAM, PALAKKAD.

BY ADV. SRI.T.P.KELU NAMBIAR (Sr.)
SRI.TOM K.THOMAS

RESPONDENT:

MOHAMMED IBRAHIM, S/O. ABDUL RAHIMAN
MUSALIAR, ARAKKAL HOUSE, MANJAKKULAM,
PALAKKAD.

BY ADV. SRI. T.KRISHNANUNNI

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 23/07/2007, THE COURT ON 25/07/2007 DELIVERED THE FOLLOWING:

WPC.NO.21329/2007 L

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF THE COMMON JUDGMENT IN CMA 32/93 AND 34/93 DTD. 8/09/1997.**

EXT.P2: **COPY OF THE ORDER DTD. 17/05/2007 BY THE WAKF BOARD.**

EXT.P3: **COPY OF THE CHEQUE APPLICATION I.A.NO.1697/2007 FILED BY THE RESPONDENT.**

EXT.P4: **COPY OF THE OBJECTION FILED BY THE PETITIONER IN I.A. 1694/2007.**

EXT.P5: **COPY OF THE ORDER IN O.S.764/1992 PASSED ON 23/06/2007.**

EXT.P6: **COPY OF THE ORDER DTD. 7/04/1993 IN CMA 32 OF 1993 ON THE FILE OF THE ADDITIONAL DISTRICT JUDGE, PALAKKAD.**

/TRUE COPY/

KSS

M.N.KRISHNAN, J

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W.P.(C) No.21329 OF 2007

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Dated this the 25th day of July, 20o7

JUDGMENT

This writ petition is filed to set aside the order passed by the learned Munsiff, Palakkad in I.A.No.1694 of 2007 in O.S.No.764 of 1992. The said application is one for issuance of a cheque. The suit is one for perpetual injunction to restrain defendants from interfering with the offerings received in the mosque and also from receiving offerings from the devotees coming to the Manjakulam mosque and not to interfere with the management of the day-to-day affairs of the mosque by the plaintiff. There was an interim application and when the matter reached the appellate court by virtue of a consent order, following arrangements were made. The plaintiff was permitted to take the amount that is collected from the Hundial placed before the jaram and defendants were permitted to take the amount from the Hundial installed before the mosque. The said interim order is the present working arrangement with respect to the collection of the amount from the Hundial.

2. During the pendency of the suit, the plaintiff died and the petitioner

in the cheque application moved an application for impleadment of him as the supplemental plaintiff. He moved the court as I.A.Nos.2217 & 2218 of 2002. He wanted himself to get impleaded as the successor Muthavalli and also by virtue of the Will executed by the deceased plaintiff. The learned Munsiff on an elaborate consideration of the materials held as follows:"In such circumstances, the petitioner is entitled to prosecute the proceedings pending before this court and he is entitled to continue further proceedings in this court. He is entitled to get substituted his name in the place of the deceased original plaintiff". By virtue of this order, the person who applied for the cheque has stepped into the shoes of the original plaintiff. Against that order, a writ petition was filed before this court and the only contention raised in the writ petition was that the civil court has no jurisdiction to pass the said order. This court, after elaborately considering the matter, found that being a suit instituted prior to the commencement of the Wakf Act, it is perfectly maintainable before the civil court. So as at present, the contention of the supplemental plaintiff that he is the successor in interest of Muthavalli stands established and therefore he is entitled to all the benefits which the original plaintiff has in the suit.

3. As referred to by me earlier, there was an arrangement regarding the distribution of the money collected from the Hundial and the original

plaintiff was entitled to take the amount that was collected from the Hundial which was installed in front of the jaram. The amount so collected comes to Rs.2,18,772/-. It is this amount which the supplemental plaintiff wants to withdraw from the court.

4. It is submitted that the Wakf Board by an order dated 17.5.2007 had dismissed the application for appointment of Muthavalli and the interim order for appointing the petitioner as Muthavalli stands cancelled. It has to be stated that what the Board has stated in the order is that it has no jurisdiction to entertain the case, as the matter is pending before a competent civil court for adjudication. So any observation made by the Board is without jurisdiction and it cannot affect the right of the supplemental plaintiff.

5. Therefore from the materials available, it has to be held that the supplemental plaintiff is competent to represent and he has stepped into the shoes of the original plaintiff and whatever benefits the original plaintiff is entitled to get, the supplemental plaintiff is also entitled to enjoy.

6. The learned senior counsel Sri.T.P.Kelu Nambiar would contend that it is stated in the cheque application that the supplemental plaintiff is prepared to redeposit the amount in case the court orders to do so at any stage of the proceedings. Then he had drawn my attention to the counter

statement to the effect that defendants in the suit had contended that the supplemental plaintiff is a man of no means and therefore if the amount is withdrawn by him it cannot be recollected and it will be a loss for the Wakf Board. Both the plaintiff and defendants are appropriating the amount collected from the Hundail by virtue of a consent order. There was no restriction imposed on the original plaintiff for withdrawal of the amount by way of direction to furnish security. So when the present supplemental plaintiff steps into his shoes, one cannot attach the conditions which were not there. Further the recitals in a cheque application that he is prepared to refund the amount is a general statement which is always made in cheque applications because a chance of varying of the original order is possible. When defendants are enjoying the benefits without any condition for withdrawal of the amount, it may not be correct to impose a condition on the plaintiff alone to withdraw that amount. Further the court was satisfied about the case of the plaintiff regarding the jaram at that point of time and therefore it is not correct to impose any restriction at this stage. The learned Munsiff has considered the matter in the proper legal perspective and had allowed the plaintiff to withdraw the amount lying in deposit and it requires

no interference.

Therefore the writ petition lacks merit and the same is dismissed.

M.N.KRISHNAN, JUDGE

Cdp/-